

Message Text

CONFIDENTIAL

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12

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DRAFTED BY L/NEA:SNELSON:JET

APPROVED BY NEA:LBLAINGEN

NEA/INS:RDLORTON

NEA/INS:DKUX

SCA/SCS:JLIVORNESE

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R 10044Z AUG 74

FM SECSTATE WASHDC

TO AMEMBASSY NEW DELHI

INFO AMCONSUL BOMBAY

AMCONSUL CALCUTTA

AMCONSUL MADRAS

C O N F I D E N T I A L STATE 192318

E.O. 11652: GDS

TAGS: CASC, PFOR, IN

SUBJECT: HARCOS/FLETCHER

REF: A) NEW DELHI 11503; B) NEW DELHI 11342

1. WE SHARE YOUR CONCERN ABOUT POSSIBILITY THAT NEW APPROACH RE CONSULAR ACCESS TO TRIAL COULD LEAD TO FURTHER DELAYS IN TRIAL. AT SAME TIME, A RELATIVELY SPEEDY TRIAL IS LITTLE CONSOLATION IF IT IS NOT ALSO A FAIR TRIAL. COMPLETE CLOSURE OF THE TRIAL TO ACCESS BY OUTSIDERS CREATES SUSPICION, IF NOT FACT, OF UNFAIR TREATMENT.

2. ON BALANCE, WE BELIEVE USG SHOULD CONTINUE TO PUSH FOR CONSULAR PRESENCE IF GOI CANNOT BE CONVINCED TO MAKE TRIAL PUBLIC ALTOGETHER. YOU SHOULD THEREFORE TAKE EARLY OPPORTUNITY TO EXPRESS TO GOI OUR CONTINUING CONCERN RE HANDLING OF CASE AND IMPORTANCE WE ATTACH TO CONSULAR PRESENCE.

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3. SUGGEST YOU MAKE FOLLOWING POINTS (WE ARE DOING SAME WITH INDIAN EMBASSY HERE):

A) AS GOI AWARE, WE HAVE BEEN EXTREMELY DISAPPOINTED AT LACK OF EFFECTIVE GOI RESPONSE TO OUR REPEATED REQUESTS

FOR A SPEEDY TRIAL, WHICH WE CONSIDER MATTER OF FUNDAMENTAL FAIRNESS TO DEFENDANTS IN A CRIMINAL TRIAL.

B) OUR RELIEF AT FACT THAT TRIAL NOW APPEARS IMMINENT HAS BEEN ACCOMPANIED BY GROWING CONCERN AT PROSPECT OF IN CAMERA TRIAL WITHOUT EVEN SO MUCH AS CONSULAR PRESENCE.

C) GOI SHOULD BE AWARE THAT THIS APPROACH TO CASE HAS VERY REAL POTENTIAL FOR SERIOUS IMPACT ON PUBLIC OPINION IN U.S. OUR CONSTITUTION GUARANTEES PUBLIC RPT PUBLIC TRIAL, AND MANY IN US, IF CASE GENERATES ADDITIONAL PUBLICITY WITH FOCUS ON IN CAMERA PROCEEDINGS, WILL CONSIDER A FAILURE TO ACCORD PUBLIC TRIAL A DENIAL OF FUNDAMENTAL JUSTICE.

D) WE BELIEVE IT WOULD BE VERY MUCH IN INTEREST OF U.S.-INDIAN RELATIONS FOR TRIAL TO BE PUBLIC. THIS IS UNQUESTIONABLY THE BEST GUARANTEE THAT ANY APPEARANCE OR SUSPICION OF UNFAIR TREATMENT WILL BE MINIMIZED.

E) IF GOI CANNOT AGREE TO PUBLIC TRIAL, PRESENCE OF CONSULAR OFFICER WOULD GO LONG WAY TOWARD PROVIDING ASSURANCE THAT TRIAL WAS FAIR.

F) GOI SHOULD UNDERSTAND THAT USG CONCERN STEMS NOT FROM DISTRUST OF INDIAN COURTS BUT FROM BELIEF THAT ANY CLOSED TRIAL, NO MATTER WHERE, IS LESS LIKELY TO BE, AND APPEAR TO BE, A FAIR TRIAL.

4. HAVE NOT YET RECEIVED TEXT PICKERING'S LETTER MENTIONED IN DELHI'S 11503 BUT ASSUME ABOVE POINTS ARE IN GENERAL CONSISTENT WITH HIS OBJECTIVES. OUR COMMENTS ON LETTER WILL FOLLOW ONCE WE HAVE CHANCE TO REVIEW.

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NNN

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